

This record is a partial extract of the original cable. The full text of the original cable is not available.

131436Z Sep 05

UNCLAS SECTION 01 OF 02 OTTAWA 002745

SIPDIS

SENSITIVE

PASS USTR FOR CLUNE, BALASSA, BURCKY AND SCHNARE

STATE FOR EB/CIP, EB/DCT AND WHA/CAN

DOC FOR ITA/MAC -- OFFICE OF NAFTA

FCC FOR INTERNATIONAL BUREAU

PARIS FOR USMISSION UNESCO

E.O. 12958: N/A

TAGS: [ECPS](#) [ETRD](#) [CA](#)

SUBJECT: SUBSCRIPTION RADIO:

CANADA ALLOWS LICENSE DECISION TO STAND

REF: (A) OTTAWA 2620 (B) OTTAWA 1865

1. (U) Sensitive, but unclassified. Not for distribution outside USG channels.

2. (U) SUMMARY/INTRODUCTION: On September 9, after furious lobbying from both sides, the GOC decided not to remand a regulatory licensing decision for subscription radio (ref B outlines the June decision by the broadcast regulator). This allows U.S.-based XM and Sirius to extend their services into Canada in coming months, albeit with further concessions on French-language content and Canadian programming. This episode may augur changes on the bilateral "cultural policy" front, which has been quiescent in recent years. In particular, technological changes continue to make the regulation of content more difficult, which is threatening to Canada's cultural-nationalist groups. END SUMMARY/INTRODUCTION

3. (U) After a week of indecision, during which the full Cabinet and an ad hoc committee both failed to resolve this issue, the government's operations committee decided on September 9 not/not to send the licensing decision back to the regulator, the Canadian Radio-Television and Telecommunications Commission (CRTC), for reconsideration. With the expiry of a 90-day review window, the CRTC licensing decision issued in early June now stands. That decision allowed Canadian versions of both XM and Sirius satellite radio to operate in Canada, provided that (like all licensed broadcasters in Canada) they met specific Canadian-content and French-language-content requirements (on the order of 10 percent and 2.5 percent of programming respectively). The CRTC also licensed one Canadian-based subscription radio service which, given a lack of satellite orbital slots, will be broadcast from terrestrial stations in major urban centers rather than by satellite. All three services were expected to begin operation by the end of 2005.

4. (U) The two major Canadian media firms which jointly own the Canadian licensee - Montreal's Astral and Toronto's CHUM - protested the June decision on grounds that the presence of XM and Sirius would make their business model non-viable. They were joined by advocates for "Canadian culture" and French-language content (ref A), who were concerned that the effect of the licenses would be to put downward pressure on Canadian content regulations more generally (Canadian content in conventional broadcasting is regulated at 20 to 35 percent). In combination, these groups persuaded Canadian Heritage Minister Liza Frulla to bring the CRTC's decision to the Cabinet table for review - an option which is rarely exercised.

5. (U) Much lobbying ensued, including full-page newspaper ads from various creative and business groups, and the issue drew far more attention in the past two weeks than during the licensing hearings. A decision to remand the matter back to the regulator might have led to further public hearings and would certainly have been costly to XM and Sirius, their Canadian partners, and equipment suppliers (notably automakers). To forestall this, the two satellite-radio groups offered to increase their French language and Canadian content somewhat beyond the terms required by the June decision. Still, the matter remained unresolved in Cabinet for a week before the operations committee decided on September 9 to accept the new content offers and otherwise let the CRTC's original decision stand.

ANALYSIS

-----

16. (SBU) Canada exempted "cultural industries" from NAFTA. The culture/media sector saw some difficult bilateral issues during the 1980's-1990's but, apart from different views on the current development within UNESCO of a "cultural diversity" treaty, bilaterally it has been quiescent since 1999. In our view, the recent satellite radio licensing episode highlights several developing threats to the status quo in Canada's "cultural policy" regime:

-- THE MINISTRY: Canadian Heritage Minister Frulla did not resolve this issue before it reached the Cabinet table. This prompts suggestions that she (like some previous Ministers in this portfolio) is too close to "creative" interests, hampering the government's ability to make good policy compromises in this and other areas. The same problem arguably contributes to the GOC's difficulties in updating Canada's copyright law, as well as its telecommunications policy regime (delays in both areas have been frustrating to U.S. interests). Observers say this must be resolved, and that the obvious solution is to re-create the "Department of Communications," which, prior to 1993, combined functions since divided between the Heritage and Industry departments. This would force these issues to be resolved within a single department and make them less prone to spill into Cabinet or Parliament. On the whole, we believe that with good leadership, such a reform could help resolve longstanding problems.

-- THE REGULATORY PROCESS: For U.S.-origin broadcast content, such as cable channels, pay-TV channels, or XM and Sirius, the Canadian regulatory regime is already exceptionally restrictive. At least until now, however, it was entirely administered by the CRTC, limiting the scope for politicizing decisions. Frulla's referral of the subscription radio matter to Cabinet not only loosened this containment, but also quickly drew concessions from the licensees. We see this as an unfortunate precedent, one which is likely to encourage further politicization of the telecom/broadcast regulatory process.

-- THE CONTINENTAL AIRWAVES: The technology on which satellite radio is based, like the Internet, makes the entire North American continent a single radio market, and this could profoundly change the rules of the "Canadian-content" game (not to mention the effort to protect the French language in North America). Such change threatens various entrenched interests in Canada's cultural nationalist community who benefit from the current "cultural policy" regime. During the hearing process which led to licensing, both Canadian Satellite Radio Inc. (the partnership representing XM) and Sirius Canada Inc. clearly felt pressure to increase the level of "Canadian content," not only on Canadian- and non-Canadian music channels offered to Canadians, but even on their U.S. services. According to the CRTC's introduction to the decision (para. 47), "although neither CSR nor Sirius Canada could commit its US partner to broadcast a minimum level of Canadian content on the U.S. channels, both applicants proposed to employ a "Canadian ambassador" who would actively seek out and champion Canadian musical selections, and encourage the program directors of the U.S. satellite services to include Canadian selections on their playlists." To our knowledge, this is the first instance of Canadian regulatory or legislative instruments/processes being contemplated to directly influence the content of media/entertainment offered to Americans by Americans (as opposed to merely promoting diffusion of Canadian products/services), but it may not be the last.

WILKINS